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HIGH COURT OF JUSTICE.

DIVISIONAL COURT. OCTOBER 6TH, 1911.

*YOUNG v. TOWNSHIP OF BRUCE.

Highway—Nonrepair—Injury to Traveller—Notice of Accident—Absence of Details—Sufficiency, in View of Knowledge of Council—Municipal Act, 1903, *sec.* 606(3).

Appeal by the plaintiff from the judgment of the County Court of the County of Bruce dismissing the action, which was brought to recover damages for personal injuries sustained by the plaintiff by reason, as alleged, of the nonrepair of a township highway, upon which he was being carried in a public vehicle on the 8th December, 1908. The vehicle, with the plaintiff in it, went over an embankment, which, as the plaintiff alleged, should have been guarded by rails, but was not. The action was dismissed on the ground that the notice of the accident given by the plaintiff to the defendants was insufficient.

The appeal was heard by BOYD, C., LATCHFORD and MIDDLETON, JJ.

S. F. Washington, K.C., for the plaintiff.

G. H. Kilmer, K.C., for the defendants.

BOYD, C.:—. . . . One of the defences is, that no notice of the accident was given, and the statute, the Municipal Act, 1903, sec. 606, sub-sec. 3, is pleaded. It is proved that notice was given on the last day of December, by letter in this form from the solicitors: "We have been consulted by the plaintiff regarding the injury received by him on the 8th December while being driven in the 'bus between Underwood and Port Elgin in consequence of the road being out of repair. No protection was

*To be reported in the Ontario Law Reports.

provided, and the 'bus was thrown down some considerable distance. This notice is given pursuant to the Municipal Act.'' On the 20th January, the town clerk replied: ''Yours of the 31st re alleged accident to Young received and considered by the council. I have been instructed to notify you that Bruce township council will not pay any damages, as they do not consider they are liable for any such damages.''

The defence, properly speaking, is not that there was no notice, but that the notice was insufficient. And that is a matter which is not to be determined by the mere frame of the notice, but by regarding the circumstances of the case. The language of the statute is, that notice ''in writing of the accident and the cause thereof'' is to be served: sec. 606, sub-sec. 3; and by the last sub-section it is provided that insufficiency of the notice required shall not be a bar if the trial Judge considers that there is reasonable excuse for the insufficiency, and that the defendants have not thereby been prejudiced in their defence. In this case the accident and the cause of it have been notified, but without such details as are particularised in the statement of claim. The vagueness exists as to the precise locality on the highway, which is said to be some ten miles, to any one who does not know the road and the places where protection is likely to be required; but to the council, who had knowledge of the culverts and hollows and places where protection was needed, and of the place where the stage had overturned on the 8th December, the notice would appear to afford reasonable information to make proper investigations in view of the threatened action. I think the maxim id certum est may well be applied to eke out the apparent insufficiency of the notice. The language used in O'Connor v. City of Hamilton, 10 O.L.R. 529, is applicable to a case where no notice has been given—a very different situation from this, where the notice was given pursuant to the terms of the statute, apprising the defendants of the injury to the traveller and the existence of the alleged lack of repair and protection at the hollow where the stage was overturned on the specified day. They had sufficient notice to put them upon inquiry, and they did investigate and consider the claim, as appears from their letter and the evidence given. The apparent vagueness as to locality may be excused from the knowledge of the council as to the particular place said to be dangerous and out of repair. . . .

[Reference to McInnes v. Township of Egremont, 5 O.L.R. 713, 715; City of Kingston v. Drennan, 27 S.C.R. 46, 61.]

The case should have been stopped at the point at which it was; and I think it should be remitted to be tried out on the

merits and as to whether the defendants have been prejudiced in their defence.

Costs in the cause.

MIDDLETON, J., agreed, for reasons stated in writing.

LATCHFORD, J., also concurred.

DIVISIONAL COURT. OCTOBER 7TH, 1911.

*GIBSON v. HAWES.

County Court Appeal—Interlocutory Order—Right of Appeal from—County Courts Act, 10 *Edw. VII. ch.* 30, *sec.* 40.

Motion by the defendants to quash the plaintiff's appeal from an order of one of the Junior Judges of the County Court of the County of York staying proceedings in an action in that Court pending the trial of a certain action in the High Court.

The motion was heard by BOYD, C., LATCHFORD and MIDDLETON, JJ.

J. R. Roaf, for the defendant James Hawes.

F. R. MacKelcan, for the defendant Alfred Hawes.

F. Arnoldi, K.C., for the plaintiff.

The judgment of the Court was delivered by MIDDLETON, J.:—

. . . The first three clauses of sec. 40(1) of the County Courts Act, 10 Edw. VII. ch. 30, were found in sec. 52 of the old statute. The proviso limiting the appeal to final orders only was uniformly held to relate to and to control the whole section (e.g., per Boyd, C., in In re Taggart v. Bennett, 6 O.L.R. 74). There is much force in Mr. Arnoldi's contention that the change in the statute as it now stands confines the operation of this restriction to cases falling under clause (c). Without determining this question, I think the motion to quash succeeds and the appeal is not competent. Clause (a), as interpreted by the appellant, is very wide and covers every possible order or decision, and the following clauses, (b), (c), and (d), as well as sec. 39, are useless and meaningless. This at once suggests that clause (a) must be

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intended to have some narrower signification. When the origin and history of the section are looked at, its true ambit becomes at once apparent.

In the County Courts Act, as found in the revision of 1877, there was no right of appeal save that conferred by sec. 35 (now found in a much modified form in sec. 39), i.e., from proceedings at the trial of an action.

In Sato v. Hubbard (1881), 6 A.R. 546, the Court of Appeal held that this section did not give the right of appeal from the judgment upon a garnishee issue. To remedy this, in the next year (1882), 45 Vict. ch. 6, sec. 4, was enacted. This is the origin of sec. 40(1) (a), (b), (c). The provision corresponding to (a) is: "Every decision hereinafter given by a Judge of the County Court under any of the powers given by the Administration of Justice Act." A reference to that Act shews that possibly the only power therein given to County Court Judges (save the right to try Superior Court cases when so directed by an order, in which case the right of appeal is specifically dealt with) is the power to conduct a summary inquiry into fraudulent conveyances. In the revision of 1887 the Administration of Justice Act disappeared, and the fraudulent conveyance sections were transferred to the Rules of Practice. The section in question was amended and first took its present wide form, giving an appeal from "every decision of a Judge under any of the powers conferred upon him by any of the Rules of Court or by any statute."

In Weaver v. Sawyer (1889), 16 A.R. 422, this section was relied upon as giving a right of appeal from a judgment at a trial (the general right of appeal being, in that revision, not from the trial, but from the decision in County Court term). Osler, J.A., delivering the judgment of the Court, refused to accord to these words any such omnibus effect, saying: "Though, no doubt, couched in very wide terms, I think it is not applicable, because the case before us is one for which special provision has been made by sec. 41, and the right of appeal being, as I have said, given by that section, is, therefore, necessarily to be pursued and reached under it."

In Irvine v. Sparks (1900), 31 O.R. 603, and Brown v. Carpenter (1898), 27 O.R. 512, the Divisional Court refused to give a wide reading to the section, holding that it is confined to decisions of "a Judge," as distinguished from a determination of the Court.

The principle of Weaver v. Sawyer warrants the holding that appeals from orders made in any cause or matter, being provided

for by clause (c), must be regulated by its provisions, and that, if there is no appeal under that clause, because the order is merely interlocutory, there is no right to appeal under any other clause.

Appeal quashed with costs.

SUTHERLAND, J. OCTOBER 9TH, 1911.

UNITED FUEL SUPPLY CO. v. VOLCANIC OIL AND GAS CO.

Contract—Option of "Oil Lease"—Right to Take Oil and Gas from Land—Interest in Land — Consideration — Document under Seal — Uncertainty as to Rental and Time — Rule against Perpetuity—"First Right or Option"—Lease of Part of Land—Notice—Reasonable Time.

Action by the United Fuel Supply Company Limited against the Volcanic Oil and Gas Company Limited, Richard Hugh Shanks, and Duncan M. Shanks, for an injunction and for certain declarations as to real property rights and for other relief.

The defendants Shanks, by indenture under seal, dated the 29th September, 1909, in consideration of $1,000 and of certain rents and royalties therein specified, granted and demised to the plaintiffs the exclusive right of searching for, producing, and taking away petroleum and natural gas in, under, and upon 100 acres of land, being the east half of lot 30 in the 2nd concession of the township of Romney, together with all rights and privileges necessary or proper for those purposes: "to have and to hold the said premises for the term of five years from the date of the delivery of these presents, and so long thereafter as oil or gas is produced from the said lands in paying quantities." The same indenture also contained this clause: "Provided and it is hereby agreed between the parties hereto that the parties of the first part, being the owners of the whole of lot No. 188 on Talbot road, in the said township of Romney, shall and will and they do hereby give to the party of the second part" (the plaintiffs) "the first right or option of leasing the last-mentioned lands for oil and gas purposes."

This indenture was registered on the 18th December, 1909.

On the 7th January, 1911, the defendant R. N. Shanks wrote a letter to the plaintiffs notifying them that he and the defendant D. M. Shanks intended to lease ten acres of lot 188 on the Talbot

road, "unless you desire to exercise your option." He then gave the terms of the proposed lease; and concluded: "Please take notice that at the expiration of thirty days from this date, unless I shall have made a lease to you in accordance with your option, I shall consider that I am free to lease the ten acres on the above terms."

The plaintiffs, on the 17th January, answered by letter, saying that their option was for a lease of the whole of lot 188 (100 acres), and that they objected to a lease of less than the whole being offered.

On the 13th February, 1911, a lease to the defendant company of the ten acres was executed by the defendants Shanks, and registered on the 7th April, 1911.

The plaintiffs began this action on the 30th March, 1911, and claimed, among other things, an injunction restraining the defendant company from operating for oil or gas in or upon the ten acres until the plaintiffs should have exercised or had a proper opportunity of exercising the first right or option of leasing the whole of lot 188 for oil and gas purposes, and for a declaration of the plaintiffs' rights, and to set aside the lease to the defendant company, etc.

O. L. Lewis, K.C., and W. G. Richards, for the plaintiffs.
John G. Kerr, for the defendant company.
H. S. Pritchard, for the defendants Shanks.

SUTHERLAND, J. (after setting out the facts):—The question to be determined is the effect of the clause giving to the plaintiffs the first right or option of leasing lot number 188 for oil and gas purposes.

Such a right has been held to be an interest in land: McIntosh v. Leckie, 13 O.L.R. 54. In that case an exclusive right to drill on certain oil lands was held to confer more than a license; "it conferred a profit à prendre, an incorporeal right to be exercised in the land comprised in it." And see also Canadian Railway Accident Co. v. Williams, 21 O.L.R. 472; 31 C.L.T. 367.

The instrument containing the option in this case is under seal. The consideration mentioned in the earlier part of the document seems to apply to the lease of the 100 acres actually made thereunder. It does not seem to relate or apply to the matter covered by the option. As the option is, however, under seal, no consideration, apparently, is necessary to support it: Savereux v. Tourangeau, 16 O.L.R. 600.

The defendants, however, contend that the option in question is void, (a) for uncertainty, (b) as offending the rule against perpetuities.

An examination of the instrument in question shews that, while the parties are certain, and under the option clause in question the lands are certain, namely, lot 188, beyond this nothing else is certain in the latter. No terms are mentioned, no rental is stated, no time is indicated. As to all these the right or option is in its terms entirely uncertain. In so far as the time is concerned it might run for 100 years.

[Reference to London and South Western R.W. Co. v. Gomm, 20 Ch. D. 562; Armour on Real Property, p. 232; 36 Can. L.J. 537; In re Trustees of Hollis Hospital and Hague's Contract, [1899] 2 Ch. 540; In re Maclay, L.R. 20 Eq. 186; Dunn v. Flood, 25 Ch. D. 629; Worthing Corporation v. Heather, [1906] 2 Ch. 532; Woodfall v. Clifton, [1905] 2 Ch. 257.]

If this option gives the plaintiffs an executory interest in land, to arise on an event which may occur after the period allowed by the rules as to remoteness, it is invalid. I think it does and is. I think, in consequence, the plaintiffs' action fails.

But, if the option is considered a matter of personal contract between the parties and as conferring an immediate right (see South Eastern R.W. Co. v. Associated Portland Cement Manufacturers, [1910] 1 Ch. 12, also 27 Law Quarterly Review 150), then how is it to be construed?

The "first right or option," I take to be the same in meaning as the first refusal, and to imply that the lessor, before leasing to another, must notify the lessee what that other is willing to offer in the way of terms so as to enable the lessee to determine, as he is given the first right or option of doing, whether he will exercise such right or option of leasing the lands for oil or gas purposes: Manchester Ship Canal Co. v. Manchester Racecourse Co., [1900] 2 Ch. 352.

The option runs for no time certain, and provides no mode of putting an end to its currency. Elsewhere in the instrument there is a clause providing that the lessees "may at any time surrender this lease, either wholly or in respect of either of said parcels" (i.e., the parcels actually leased), "as they may elect, and be released from further liability accordingly, and this grant shall thereupon become null and void and of no effect to the extent that it shall be so surrendered."

It contains the following further provision: "The said parties of the first part (lessors) to give thirty days' notice to said parties of the second part pointing out the default (if any)

so that it can be removed before declaring this lease void either wholly or in part."

Does the option mean or can it reasonably be construed as meaning that the lands covered thereby are to be tied up during the lifetime or ownership of the lessors in such a way, at the option of the lessees, as that, unless some person other than the lessees makes an offer to lease the entire one hundred acres at one time, the lessees are not to be put to the necessity of exercising their option? It seems to me that such was not the intention of the parties, and would be an unreasonable and unwarranted construction to place upon the language used. What I think can fairly be gathered from the document as a whole, and was intended by the parties, is, that, if at any time the lessors obtained an offer to lease the land covered by the option, in whole or part, they must, as to such offer, notify the lessees and give them a right of exercising their option before closing with such offer. That is exactly what the lessors did in this case. The lease bears date the 29th September, 1909. On or before the 7th January, 1911, the lessors, having obtained an offer from their co-defendants in this action to lease the ten acres in question on certain terms, communicated on that date, in writing, those terms to the plaintiffs, and notified them that, if at the expiration of thirty days from that date they had not made a lease to the plaintiffs in accordance with their option, they would consider that they were free to lease the ten acres on the terms in question. The plaintiffs took the position that the lessors could not offer the land for leasing purposes in any less quantity than the full 100 acres. I think this was an unreasonable and unwarranted position for the plaintiffs to take under the document in question. I think the action, in this view, would fail in any event as to the ten acres. I would have preferred to have limited the judgment to dealing only with the lease of the ten acres and making an order confirming it. It may well be also that, as no time is mentioned in the option for its exercise, the lessors might have the right to put an end to it in whole at any time, on giving the lessees reasonable notice that they must take advantage of it or forfeit the right to do so. If thirty days is reasonable notice—and it is so provided in this lease—in case of default by the lessees under it before the lessors can declare the lease void in whole or part, and if it is reasonable for the lessees to surrender the lease at any time and be released from further liability in respect to either of the parcels of land actually leased, can it be said by the plaintiffs that thirty days' notice is not reasonable notice to them on the part of the lessors calling upon them to

exercise or lose their right of option of leasing ten of the one hundred acres which that option applies to or affects?

The defendants Shanks are entitled to a declaration that the option contained in the agreement is void, for the reason already assigned, and I make such declaration accordingly. The lease of the ten acres is confirmed. The action will be dismissed with costs.

MIDDLETON, J., IN CHAMBERS. OCTOBER 11TH, 1911.

RE QUIMBY.

Will — Construction — Bequest of Residue — Death of One of Several Legatees before Death of Testator—Lapse—Intestacy —Vested Shares of Survivors—Distribution of Estate.

Motion by the executors of Mary M. Bradley for an order for payment out of Court to them of the shares of the deceased in the estate of Albert Brown Quimby.

W. T. J. Lee, for the applicants.
F. W. Harcourt, K.C., for the infants.

MIDDLETON, J.:—Subject to the life estate given to his mother and the $6,000 legacies to cousins, the remainder of one-half of the testator's estate is given to Adam H. Brown, James J. Beardsley, J. W. J. Brown, and Mary M. Bradley.

The testator died on the 22nd February, 1883, and his mother on the 26th October, 1909. The legacies to his cousins have been paid; the executor has passed his accounts; and $2,383.89, representing this half interest, has been paid into Court by him under the Trustee Relief Act.

The will is dated the 10th January, 1880, and James J. Beardsley died on the 22nd May, 1880, thus predeceasing the testator some three years. His share, therefore, lapses; and, according to Skrymsher v. Northcote, 1 Swans. 566, there is an intestacy. There the Master of the Rolls said: "It seems clear . . . that a part of the residue of which the disposition fails will not accrue in augmentation of the remaining parts, as a residue of residue; but, instead of resuming the nature of residue, devolves as undisposed of." The precise point there dealt with was the lapse of a legacy of a specific sum out of a share in the residue; and, while the decision itself upon this question has

been doubted (see per Kay, J., in In re Judkin, 25 Ch. D. 750, and per Farwell, J., in In re Parker, [1901] 1 Ch. 410), nothing is said in any way qualifying the above statement. Humble v. Shore, 7 Hare 247, an unwarrantable graft upon this rule, by which the express direction of the testator that the lapsing share of the residue should fall into the residue and be distributed as part of the remaining shares of the residue could not be given effect to, was finally overruled in In re Allen, [1903] 1 Ch. 276; and probably Skrymsher v. Northcote will not be followed when the case of a lapsed legacy out of a share in the residue comes to be considered; but there is no warrant for augmenting the remaining shares of a residuary gift by reason of the lapse of one share, unless the will contains some provision shewing that this is the testator's intention.

The other legatees survived the testator, and their shares were vested, and upon death passed to their personal representatives, i.e., the executors of such as died testate and the administrators of those who died intestate.

The fund may now be distributed. The share of Mary M. Bradley to be paid to her executors, and the shares of Adam H. Brown and J. W. J. Brown to their administrators, upon production of letters of administration to their respective estates.

The Clerk in Chambers may inquire and ascertain the next of kin of the testator, and distribute the remaining one-fourth among them, making a schedule of distribution as in the case of a report.

If so desired, a separate order may issue dealing with the other shares so as to avoid any delay incident to this inquiry; and in this case there will be a reference to ascertain the next of kin, and an order for payment in accordance with the report.

Costs of this motion out of the fund. Costs of the inquiry out of the one-fourth share.

As the motion was presented without any explanation or discussion by counsel, I shall be glad to hear them, if any point has been overlooked.

DIVISIONAL COURT. OCTOBER 12TH, 1911.

*WARD v. McBRIDE.

Slander—Words Imputing a Felony—Explanation by Other Words—Right of Defendant to Shew Facts—Understanding of Bystanders — "Robbery"—Corporation—Pleading—Innuendo—Violence of Language—Occasion of Qualified Privilege — Alderman Addressing City Council — Absence of Belief that Plaintiff Committed Crime—Nullification of Privilege if Crime Imputed.

Appeal by the defendant from the judgment of MULOCK, C.J. Ex.D., upon the verdict of a jury, in favour of the plaintiff, in an action for slander.

The defendant, who was an alderman of the City of Toronto, at a meeting of the city council referred to an action brought by the city corporation against the present plaintiff—City of Toronto v. Ward, 18 O.L.R. 214—and said that the plaintiff had "robbed the city;" and this was the slander charged. The defendant was urging that as a reason why no consideration should be shewn to the plaintiff in a matter then before the council. He explained what he meant by robbing the city—that the plaintiff had withheld money which had been recovered in the action. The plaintiff alleged that this was a charge of a crime.

The appeal was heard FALCONBRLDGE, C.J.K.B., BRITTON and RIDDELL, JJ.

R. McKay, K.C., for the defendant.

M. K. Cowan, K.C., for the plaintiff.

RIDDELL, J.:—. . . The common law is not so absurd as to permit any one to lay hold of a single word in a statement and to assert that, as such word, in its strict legal or any other sense, is the name of a crime, therefore a crime is imputed by the speaker using the word. As it is common sense, so it is common law, that the whole of the circumstances under which the word is used and the whole of the context must be considered—and, if it appear either from the utterances as set out in the claim or in the innuendo or in the evidence given that in truth and in fact there was no charge or imputation of crime, the jury cannot be permitted to find the defendant liable in damages as

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though he had in fact imputed a crime. And this is old law. . .

[Reference to Brittridge's Case (1602), 4 Co. R. 18. b.; Minors v. Leeford (1605), Cro. Jac. 141; Smith v. Ward (1623), Cro. Jac. 674; Lo v. Saunders (1606), Cro. Jac. 166; Slowman v. Dutton (1834), 10 Bing. 402; Tibbs v. Smith, 3 Salk. 325; Baker v. Pierce, 6 Mod. 23; Cristie v. Cowell (1790), 1 Peake 4; Allen v. Hillman (1831), 29 Mass. (12 Pick.) 101; Fellowes v. Hunter (1861), 20 U.C.R. 382.]

It is clear that the rule . . . "words primâ facie imputing a felony are not actionable if explained by subsequent words" (4 Co. R. 18. b.), or, I add, other words, applies not only when the modifying or explanatory words are set out in the statement of claim as part of the matter complained of, but also where the words so alleged to modify or explain are left out of the statement of claim, but are proved in evidence. . . .

[Reference to 4 Co. R. 19. b; Snag v. Gee (1597), 4 Co. R. 16. a.; Day v. Robinson (1834), 1 A. & E. 554, 558; Thompson v. Bernard (1807), 1 Camp. 48.]

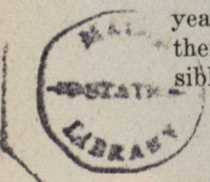
In all cases, all the facts may be shewn, not only the words used by the defendant—as shewing that what was charged was not a crime. . . .

[Reference to Lemon v. Simmons (1888), 57 L.J.N.S.Q.B. 260; Penfold v. Westcote (1806), 2 B. & P. N.S. 335; Tomlinson v. Brittlebank (1833), 4 B. & Ad. 630; Jackson v. Adams (1835), 2 Bing. N.C. 402.]

Such cases establish conclusively that the Court may and should examine not only the words charged in the statement of claim, but also all the other words used at the same time and all the other circumstances of the case, and, if the facts are such that, taken altogether, they shew that the alleged slanderous words do not impute what is in fact a crime, and that no reasonable bystander would consider them as imputing a crime, the jury cannot be permitted to hold the defendant liable as if he had imputed a crime in fact.

It seems to me to savour of absurdity to say that any reasonable person standing by could—and certainly it is not proved or suggested that any one did—imagine that the defendant here was charging the plaintiff with anything but what the plaintiff had admittedly done.

Even if the plaintiff could get rid of this difficulty, I think he would be met with another. The words alleged in the statement of claim are: "Mr. Ward has robbed the city of $25 a year." Many cases are to be found (I have mentioned some of them) in which it is laid down that if what is charged is impossible in law the plaintiff cannot recover. . . .



[Reference to Tomlinson v. Brittlebank, 4 B. & Ad. 630; Russell on Crimes (1909), p. 1127; Criminal Code, sec. 445, definition of "robbery;" Bishop's Criminal Law, ch. 39, secs. 1156 et seq.]

The person upon or against whom a robbery is committed must be a natural person . . . a corporation cannot be robbed in the legal sense. . . .

[Reference to McCarty v. Barrett (1867), 12 Minn. 494, 499.]

Upon the words as charged, then, the plaintiff could not succeed. Turning now to the innuendo, "the defendant by the said words meant to charge and did charge the plaintiff with having stolen from the city $25 a year which the defendant then alleged the plaintiff had received as rent from one Thomas Flynn, to whom the plaintiff had leased a piece of property on the island belonging to the city, under the belief that it was part of the property covered by a lease which he then held from the city. ."

[Reference to Hunter v. Sharpe, 4 F. & F. 983; Ruel v. Tatwell, 29 W.R. 172; Odgers on Libel and Slander, 4th ed., p. 632.]

It cannot be contended, I venture to think, that what was charged was actual theft—and consequently the innuendo fails. Even if the plaintiff were to be allowed to change the innuendo, he could not make it any stronger than a charge against the plaintiff of defrauding the city of $25 a year by fraudulent and dishonest means; and that is clearly insufficient, upon the authorities. . . .

[Reference to Ashford v. Choate, 20 C.P. 471.]

Complaint is made of violence of language on the part of the defendant. While this may be evidence of malice, it is not evidence either of the sense in which the defendant used the words complained of or of the sense in which the bystanders understood them. But, even if it could be evidence, I do not think that the words "robbed the city" constitute a very violent method of expressing what was done by the plaintiff. . . .

There can be no doubt that the occasion was privileged. Aldermen are legislators in as true and in many instances as important a sense as members of Parliament or of the Legislature —it is their right and their duty to speak their minds fully and clearly without evasion or equivocation—they should shew no fear, favour, or affection; and it is their duty, as well as their right, to use all legitimate means, oratorical or otherwise, to impress their fellow-legislators with the righteousness of their views—they have no need to be mealy-mouthed and should call a spade a spade. Nor need they, in such a case as this, necessarily confine their arguments to the immediate facts. . . .

[Reference to Putard v. Oliver, [1891] 1 Q.B. 474.]

There cannot be a doubt that the occasion was one of qualified privilege, and that the defendant had the right as an alderman to say anything, however false, which he honestly believed to be true. . . .

But, if a crime was in fact imputed by him, it seems that he did not actually believe that the plaintiff did commit a crime. The qualified privilege would, therefore, be nullified.

For the reasons I have mentioned, however, I think the verdict and judgment cannot stand, and that the appeal must be allowed with costs and the action dismissed with costs.

BRITTON, J., concurred, for reasons briefly stated in writing.

FALCONBRIDGE, C.J., dissented, for reasons stated in writing.

RE REUBER—FALCONBRIDGE, C.J.K.B.—OCT. 6.

Will—Construction—Gift to Deceased Daughter—Children of Daughter Standing in her Place.]—Motion by the executors of Maria Reuber for an order declaring the true construction of her will. The learned Chief Justice said that it was the manifest intention of the testatrix that the grandchildren should take the share of their deceased mother. The gift is saved from being a gift to a class by the fact that the individuals to be benefited do not bear the same relation to the testatrix. It does not, therefore, lapse or go to other members of the alleged class: Theobald, 7th (Can.) ed., p. 787; Kingsbury v. Walter, [1901] A.C. 187, 192; In re Venn, Loudon v. Ingram, [1904] 2 Ch. 52 These infants will take their mother's share. Costs out of the estate. H. H. Davis, for the executors. E. C. Cattanach, for the infants.

RE BROOM—DIVISIONAL COURT—OCT. 9.

Criminal Law—Police Magistrate—Information for Perjury—Refusal to Issue Summons—Mandamus—Discretion.]—Appeal by James Broom from the order of MIDDLETON, J., ante 51. The Court (MEREDITH, C.J.C.P., TEETZEL and MIDDLETON, JJ.) dismissed the appeal. The appellant in person. No one for the magistrate.

HOLLAND v. HALL—MASTER IN CHAMBERS—OCT. 9.

Slander—Pleading—Statement of Claim—Motion to Strike out Paragraphs—Special Damage.]—Motion by the defendant to strike out the 5th, 6th, 7th, and 8th paragraphs of the statement of claim in an action for damages for alleged defamatory statements made by the defendant on three different occasions. It appeared from the paragraphs not attacked that the plaintiff was a councillor of Walkerville for 1910, and was nominated for mayor on the 26th December in that year. After the formal nominations, a public meeting was held at which the defendant was said to have made serious charges against the plaintiff, which, it was conceded on the argument, implied criminal charges. The 5th paragraph alleged a statement by the defendant, at the same meeting, of the plaintiff having sought to use his position as councillor to benefit himself by getting the assessments of some houses he owned reduced below their real value. The 6th paragraph set out a charge of the plaintiff, while a councillor, having used his position to overcharge the municipality for goods supplied for certain purposes, one of them being mourning drapery at the death of His late Majesty. The 7th paragraph alleged certain statements made in March and April, 1911, of a similar character to the foregoing, and charging the plaintiff with having "robbed the town," and charging that he had been "dishonest in his dealings with the town and had received money he was not entitled to." The 8th paragraph alleged general loss of business by reason of the premises; that he had been greatly injured in his credit and reputation; and he claimed special damages for such loss and injury. It was argued that there were not sufficient allegations in the 5th, 6th, and 7th paragraphs to support a claim for special damages. The Master said that, as at present advised, he was not of that opinion. In any case that would seem to be matter of defence: Odgers on Pleading, 3rd Eng. ed., precedent No. 100, p. 434. In Glass v. Grant, 12 P.R. 480, the rule was laid down that pleadings should seldom be interfered with on summary application, and this had been approved and followed in subsequent cases. See Stratford Gas Co. v. Gordon, 14 P.R. 407. The allegations made by the defendant against the plaintiff, if shewn to be false, might affect the plaintiff injuriously in his business. He might be able to shew damage resulting from these accusations of wrongdoing, within the principle of Ratcliffe v. Evans, [1892] 2 Q.B. 524. Motion dismissed. Costs to the plaintiff in the cause. R. C. H. Cassels, for the defendant. Frank McCarthy, for the plaintiff.

NATIONAL TRUST CO. v. TRUSTS AND GUARANTEE CO.—MASTER IN CHAMBERS—OCT. 10.

Pleading — Statement of Defence — Embarrassment — Res Judicata—Dilatory Pleas—Parties—Motion to Add Defendant—Opposition of Plaintiff.]—Motion by the plaintiffs to strike out paragraphs 7, 8, and 10 of the statement of defence as embarrassing, and to strike out the words ''and for the Imperial Plaster Company Limited'' at the end of the statement of defence. Cross-motion by the defendants to have the Imperial Plaster Company Limited added as a defendant. The nature of the action appears from the note of the judgment of the Court of Appeal, 2 O.W.N. 1314. The paragraphs attacked by the plaintiffs' motion set up that sec. 133 of the Dominon Winding-up Act was a bar to the action, and that the claim of the plaintiffs could be dealt with only in the winding-up. The Master said that this was the very point dealt with by the Court of Appeal; the pleading was embarrassing, because it brought forward a defence which the defendants were not entitled to make use of: Stratford Gas Co. v. Gordon, 14 P.R. 410, 414; Heugh v. Chamberlain, 25 W.R. 742. It was on the petition of the Imperial Plaster Company Limited that the winding-up order was made; and it was said that the presence of that company before the Court was necessary for the adjudication upon and settling of the questions arising in the action. The Master said that a defendant could be added against the wish of the plaintiff only in a very plain case: Imperial Paper Mills of Canada v. McDonald, 7 O.W.R. 472; and that here the necessity did not arise, as the action was at present properly constituted, so far as appeared. The defendants' motion should be dismissed, and the plaintiffs' motion should succeed both as to the paragraphs attacked and the words at the end. Costs of both motions to the plaintiffs in any event. Reference to the remarks of Middleton, J., in Goldfields Limited v. Harris Maxwell Co., 2 O.W.N. 1391, as to the abolition of dilatory pleas; also Odgers on Pleading, 5th ed., p. 141(*a*). R. C. H. Cassels, for the plaintiffs. W. Laidlaw, K.C., for the defendants.